

1 Proceedings recorded by mechanical stenography, transcript
2 produced by notereading.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COURTROOM DEPUTY: Case 3:15CR24-4, United States
2 of America versus Pablo Duran, Jr., matter called for
3 sentencing.

4 THE COURT: Counsel, if you'll approach for one
5 minute, please.

6 (A side bar conference was had on the
7 record.)

8 THE COURT: Deanna just asked a question as to
9 whether there's any objection to having the other
10 defendants present during each of the sentencings? Doesn't
11 matter to me.

12 MR. NUNNARI: I don't think it matters for me.

13 THE COURT: And if it does to either of you --

14 MR. KLUCAS: It doesn't matter to us.

15 (Side bar conference concluded.)

16 THE COURT: Counsel, do you have any objections
17 to the Presentence Report?

18 MR. NUNNARI: Not to the final Presentence
19 Report.

20 THE COURT: Did you read the Presentence Report,
21 Mr. Duran?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: Did you understand what it says and
24 what it means?

25 THE DEFENDANT: Yes, I did.

1 THE COURT: Did your lawyer go over it with you?

2 THE DEFENDANT: Yes, he did.

3 THE COURT: Mr. Nunnari, there was a plea
4 agreement in this case; is that correct?

5 MR. NUNNARI: There was, Your Honor.

6 THE COURT: On reviewing the transcript, it
7 appears that the -- there's been a bit of an oversight, and
8 that is that I don't believe that your client was directly
9 asked if he understood as part of his plea agreement he's
10 waived completely any right to an appeal or post conviction
11 relief under Section 2255, habeas corpus or otherwise,
12 unless and except if I would give a sentence in excess of
13 the statutory maximum.

14 MR. NUNNARI: Yes, Your Honor.

15 THE COURT: Did you understand that, Mr. Duran?
16 Did you hear what I just said?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: And do you understand that basically
19 you've given up your right to appeal --

20 THE DEFENDANT: Yes, sir.

21 THE COURT: -- unless I were to impose a sentence
22 in excess of the 20 year statutory maximum?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: And Mr. Nunnari went over the
25 Presentence Report with you?

1 THE DEFENDANT: Yes.

2 THE COURT: And did he answer any questions you
3 may have had about it?

4 THE DEFENDANT: Yes, he did.

5 THE COURT: And are you completely satisfied that
6 he has done everything that he should have done to prepare
7 both you and him for today's proceedings?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: Mr. Nunnari, was this, quote, an open
10 file case? In other words, to what extent were you
11 apprized of the government's likely evidence against your
12 client?

13 MR. NUNNARI: Yes, Judge, it was an open file
14 case.

15 THE COURT: Okay. And did you discuss -- without
16 going into any details -- I will simply assume, unless you
17 can indicate otherwise, that you discussed what you learned
18 from the government and undertook to advise your counsel --
19 your client to the best of your ability?

20 MR. NUNNARI: Yes, Judge.

21 THE COURT: Okay. And Mr. Duran, are you fully
22 and completely satisfied that your lawyer, at every stage
23 of the proceedings, undertook to do those things necessary
24 to inform himself and you about what the government's case
25 appears to be and otherwise to prepare himself completely,

1 thoroughly and adequately to represent you at each stage of
2 these proceedings?

3 THE DEFENDANT: Yes.

4 THE COURT: Is there anything that he did that
5 you told him not to do, that he did it anyway?

6 THE DEFENDANT: Not that I'm aware of.

7 THE COURT: Is there anything you told him to do,
8 go talk to this person, go visit this, go research that,
9 file that sort of motion, whatever, was there anything that
10 you asked or told him to do that he didn't do?

11 THE DEFENDANT: No.

12 THE COURT: Just to confirm the guideline range,
13 it's my understanding the base offense level of 11,
14 criminal history category of one, guideline range of 8 to
15 14 months. Counsel, is that correct from the government?

16 MS. MULHAUSER: That's correct, Your Honor.

17 THE COURT: Mr. Nunnari, is that your
18 understanding?

19 MR. NUNNARI: It is, Your Honor.

20 THE COURT: Okay. On behalf of the government?

21 MS. MULHAUSER: Your Honor --

22 THE COURT: I should indicate I'm inclined to
23 give him a sentence within the guideline range. I have
24 read the Presentence Report. Obviously I've heard the
25 victim impact testimony. I also understand that this

1 defendant's participation was induced by his own father,
2 that he's an American citizen, that he has no prior
3 criminal record, and that compared to some of the other
4 defendants, his involvement was substantially less, and
5 that he had nothing to do with the recruitment, bringing
6 the -- smuggling into this country and transportation to
7 the hirees of any of the victims, is that correct?

8 MS. MULHAUSER: That does adequately summarize
9 the government's position. We will be asking for a
10 guideline sentence. We would also ask -- I'm not certain
11 whether The Court has adopted the magistrate's order of the
12 guilty plea.

13 THE COURT: I have.

14 MS. MULHAUSER: Thank you, Your Honor. So the
15 government would ask for a guideline sentence for the
16 reasons laid out by The Court.

17 MR. NUNNARI: Your Honor, thank you. I tendered
18 a sentencing memorandum to The Court, I'm sure The Court
19 has reviewed it. I'm not going to be repetitive except to
20 highlight the fact that as I was sitting here --

21 THE COURT: As I understand it, the defendant's
22 own father is now a fugitive?

23 MR. NUNNARI: Yes.

24 THE COURT: Having put his son, in effect, the
25 sacrificial lamb to atone not only for his sins but for

1 those of his father, who as I understand it was so far --
2 was substantially more active and involved and a culpable
3 participant in the activities that bring us here today.

4 MR. NUNNARI: I would agree with that
5 observation, Your Honor. It was telling to note that none
6 of the victim impact statements, the allocation statements
7 today even referenced Mr. Duran. As we were sitting there
8 listening to remarks, I asked Mr. Duran which one of you
9 guys is the bad guy? Which one's Mr. Castillo? I don't
10 know I've never seen him before. So that indicates the
11 level of his involvement. It's basically to find, to
12 transport the workers from the trailer park to the job
13 sites.

14 It's also relevant to note the description of the
15 conditions, the way that these workers were treated. In
16 contrast, Mr. Duran often went without in order to make
17 sure that the workers had adequate food and drinks during
18 their work shifts. And I think that's a very telling thing
19 about Mr. Duran. I've been working with him very closely
20 on this matter. He seems to be a fine young man, nice
21 family. I've met his wife. I understand he has three
22 children in the home.

23 Judge, we understand that The Court
24 is constrained to impose a guideline sentence. We know
25 that the sentence does fall within zone B of the sentencing

1 table. We would very strongly encourage The Court to
2 consider a sentence that imposes perhaps a day's
3 incarceration, and then to confine Mr. Duran to home
4 detention for the duration of the balance of the sentence.
5 He was working, he's working hard. He's stayed out of
6 trouble. He's been on pretrial release with absolutely no
7 issues whatsoever, Your Honor. This is an unfortunate
8 learning experience for Mr. Duran, especially as Your Honor
9 has noted to be put in this position by his own father. He
10 was basically in a position to go along to get along. He
11 understands after having been made aware of all of these
12 occurrences, the terrible conditions in which these people
13 lived and how they got here, he's aware of his guilt, and
14 he takes responsibility for that. So we would ask The
15 Court to consider a sentence at the low end --

16 THE COURT: Mr. Duran, would you like to speak --
17 first of all, does the government dispute any of the
18 factual contentions just made by -- by Mr. Nunnari on
19 behalf of Mr. Duran?

20 MS. MULHAUSER: The government does not dispute
21 any of those facts.

22 THE COURT: Mr. Duran --

23 THE DEFENDANT: No.

24 THE COURT: -- you have the right to speak on
25 your own behalf before I decide what I'm going to do.

1 THE DEFENDANT: I guess I just want to apologize
2 for any harm that I have caused. That wasn't my intention,
3 and that I am truly sorry.

4 THE COURT: What was the period of this
5 defendant's involvement in the overall time frame? Take
6 whatever time you need to check your notes and so forth, or
7 consult with the case agent if you want.

8 MS. MULHAUSER: Your Honor, it is July 2013 to
9 December 2014, so about a year-and-a-half.

10 THE COURT: Okay.

11 MS. MULHAUSER: Your Honor, it was -- the
12 defendant moved back and forth between Iowa and Ohio, so he
13 was not participating during all of that time period, but
14 he was participating substantially during that time period,
15 and that is what he admitted to in his plea.

16 MR. NUNNARI: Judge, Mr. Duran has indicated that
17 he was present here in Ohio engaged in these activities
18 from May of 2013 to April of 2014. Wait. He said no.
19 That's it.

20 THE COURT: To the extent that the government is
21 aware of the -- to the extent to which any of the persons
22 he was involved in transporting were juveniles at the time
23 under the age of 18?

24 MS. MULHAUSER: Yes, Your Honor, several of them
25 were juveniles under the age of 18. And Mr. Duran has

1 acknowledged that he understands that in his allocation
2 affidavit.

3 MR. NUNNARI: Your Honor, the other thing I
4 should be noted is that the original Presentence Report
5 scored the base offense level without any adjustments at
6 19. The government and I both objected to that, and --

7 THE COURT: My understanding is the offense level
8 is what it is, there's no dispute about that.

9 MR. NUNNARI: Yeah, just to point out that the
10 two points that were originally ascribed were taken off,
11 and that those two points were because the alien was
12 involuntary detained through coercion or threat or in
13 connection with demand for payment after being smuggled
14 into the United States. It was agreed upon that Mr. Duran
15 had no part in any of that kind of --

16 MS. MULHAUSER: Your Honor, the government would
17 like to make clear that it was in the defendant's plea
18 agreement, and it is in the PSR that the defendant
19 knowingly transported minors.

20 MR. NUNNARI: We don't dispute that.

21 THE COURT: Mr. Duran, anything further?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Pursuant to the Sentencing Reform Act
24 of 1984 and 18 U.S. Code Section 3553(a), it's the judgment
25 of this Court that defendant be and hereby is committed to

1 the custody of the Bureau of Prisons to serve a term of 14
2 months. That is a guideline sentence, it's the high end of
3 the guidelines, and that reflects the information I learned
4 during the course of this colloquy with regard to the age
5 of the persons -- some of the people being transported, a
6 rather troublesome feature of this case is of course the
7 age of many of the people who were forced into these
8 situations -- these circumstances. And as a result of the
9 minority, I think it's fair to conclude that they were
10 particularly compelled to remain where they were and endure
11 what they did until the investigation relieved them of that
12 period of, in all practical events, that confinement. And
13 that will be followed by a three year term of supervised
14 release.

15 Within 72 hours of your release from confinement,
16 you shall report in person to the probation office in the
17 district in which you are released or the pretrial service
18 and probation office in this district. You also will be --
19 was it one count to plead? Special assessment of \$100.
20 And when can that be paid, Mr. Nunnari? I would expect to
21 permit the defendant to remain free on the same conditions
22 of release pending notification of where he needs to
23 report.

24 MR. NUNNARI: We can take care of the special
25 assessment probably as soon as today, Your Honor.

1 THE COURT: Okay. And there is, I assume, the
2 restitution in this case, what's the restitution amount?

3 MS. MULHAUSER: Your Honor, with respect to this
4 defendant, there is not restitution.

5 THE COURT: Okay. There'll be no restitution.
6 There'll be no fine. I believe that the severity of the
7 sentence itself is sufficient to make a fine unnecessary.

8 While on supervised release, you shall comply
9 with the following standard conditions adopted by this
10 court. You shall be made aware more fully and completely
11 in detail upon beginning your term of supervision. So if I
12 don't recite all of them now, that doesn't mean that they
13 do not apply.

14 Simply to summarize, you shall not commit another
15 federal, state or local crime. If you have any substantive
16 encounter with a police officer, whether or not it leads to
17 your arrest or charge, you shall notify the probation
18 officer immediately. You shall not possess a firearm,
19 destructive device or deadly instrumentality. Mr. Duran, I
20 want you to understand you can never again lawfully possess
21 a firearm of any kind. You have been convicted of a
22 serious crime and felony, and federal law prohibits
23 possession of any firearm, ammunition or any accessories
24 that can be used as a firearm by somebody who's been
25 convicted of a felony. I gather it's not necessary to

1 impose a substance -- a drug testing requirement?

2 MS. MULHAUSER: I don't.

3 PROBATION: No, Your Honor.

4 THE COURT: You shall, however, refrain
5 completely from any unlawful use of controlled substances.
6 You shall diligently seek to obtain, and if you obtain,
7 diligently seek to maintain lawful gainful employment. You
8 shall cooperate fully with the probation officer in efforts
9 that that officer makes on your behalf in that regard. You
10 shall also provide the probation officer with full and
11 complete information about your financial circumstances.
12 You shall not open any new lines of credit, in other words,
13 no credit cards, no financial obligations, bank loans,
14 mortgages, whatever, without the prior approval and
15 concurrence of the probation officer. You shall submit to
16 the collection of DNA by the Bureau of Prisons. Is there
17 anything else I should mention?

18 PROBATION: Yes, Your Honor, firearms
19 restriction.

20 THE COURT: I just did that. The probation
21 officer indicates it's her recommendation, which I
22 overlooked, that restitution be ordered, and
23 that's several -- 4,000 -- how much?

24 PROBATION: I have \$4,750, but there was other
25 information regarding victim loss of \$9,000, so I'm not

1 sure --

2 THE COURT: I'll leave it at \$4,750. That
3 amount's to be paid in full at the time the supervised
4 release is completed. Anything else I should mention?

5 PROBATION: Windfall condition.

6 THE COURT: Pardon?

7 PROBATION: Windfall condition.

8 THE COURT: And if you were to receive any sort
9 of benefit, financial benefit, in other words to use a
10 colloquial term windfall, you shall notify the probation
11 officer, and it shall be applied to any outstanding amount
12 to restitution.

13 MS. MULHAUSER: Your Honor, may we request that
14 the restitution will be joint and several with the other
15 defendants?

16 THE COURT: It will be joint and several with all
17 defendants. And if the amount is greater, only the amount
18 indicated will be expected of him.

19 Let me say a couple things, Mr. Duran,
20 particularly in view of your residence. You might well not
21 be supervised by me, but you should understand that the
22 terms and conditions of supervised release are not
23 optional. They are court orders. And no Judge likes to
24 have his or her orders disregarded. There's no such thing
25 as a technical violation. They're all important and are to

1 be fulfilled.

2 The other thing that I would advise you is work
3 cooperatively with the probation officer. If you encounter
4 any problems or difficulties, and I doubt that you will,
5 but if you do, be honest and forthright with the officer,
6 because if you're not truthful to the U.S. probation
7 officer, you are lying to a federal judge. The Judge,
8 whether it is I or some other judge, wherever you may be,
9 subject to supervision, is your ultimate probation officer.
10 We all work closely with the probation officers and are
11 kept fully informed and apprized of one's progress or lack
12 thereof of supervised release.

13 Candidly, I'm quite confident that there's every
14 reason to expect that your term of supervised release will
15 be satisfied without incident or problem, just as your
16 pretrial release performance has been that way.

17 To state my reasons for the sentencing, it is
18 uncharacteristically at the high end of the guidelines to
19 be quite candid with you, however, this is an extremely
20 serious offense. Being complicit in the virtual
21 enslavement and involuntary servitude of anybody is
22 heinous, hideous and immoral to an unimaginable extent. I
23 realize that your involvement was, quote, at the lower end.
24 However, none of this would have happened if there hadn't
25 been somebody willing to drive people back and forth to

1 work as these persons were required to work according to my
2 understanding in reading the Presentence Reports. Very
3 serious offense, involves several persons, several of whom
4 are juveniles.

5 I have taken into consideration in deciding to
6 remain within the guidelines the representations made by
7 Mr. Nunnari and acknowledged by the government that to some
8 extent you undertook to treat some of these individuals,
9 perhaps all of them from time to time in a more humane way,
10 which encouraged me to do so. But nonetheless, that does
11 not overcome in my mind completely the seriousness of the
12 offense.

13 A principle objective that I'm undertaking to
14 accomplish by my sentence, and the fact that it is at the
15 high end of the guideline range, is to emphasize the
16 revulsion that I feel upon reading the Presentence Reports,
17 and revulsion I think any citizen would feel upon becoming
18 aware of the information that's been brought to my
19 attention, including the information brought to my
20 attention here in open court this morning. So I hope that
21 this sentence serves a public deterrent effect. Also hope
22 that perhaps it might encourage others who may be subjected
23 to the same conditions, I realize it may not be a very
24 likely hope to be accomplished, but those who are
25 victimized in this way should understand, and their

1 families should understand that once circumstances of this
2 sort are called to the attention of the federal
3 authorities, they will be investigated and prosecuted
4 vigorously, and in all likelihood successfully. And I
5 would expect that other federal judges would view this kind
6 of conduct with the same degree of abhorrence as I do and
7 feel as I do, that would otherwise justify a severe
8 sentence is warranted and appropriate. I don't think it's
9 necessary for purposes of individual deterrence to impose
10 any greater sentence than perhaps even the sentence that
11 I've imposed. But public deterrence is the fundamental
12 concern and a principle objective that I'm trying to serve
13 by giving you, within the guidelines, the most severe
14 sentence available. I could have given you a more severe
15 sentence. I did not elect to do so.

16 I also hope that the sentence is of the sort that
17 I've imposed upon you will enhance respect for the law. I
18 think all things considered it's a fair, just and
19 appropriate sentence. And most importantly, I think it is
20 sufficient but not greater than necessary to accomplish the
21 purposes of investigation, prosecution, conviction.

22 So would the government request that I express
23 anything further with regard to the application of sentence
24 with regard to the 3553(a) factors?

25 MS. MULHAUSER: No, Your Honor, the government is

1 satisfied.

2 THE COURT: Mr. Nunnari?

3 MR. NUNNARI: I'm sorry, Your Honor?

4 THE COURT: Would you request that I express
5 anything further with regard to the 3553(a) factors?

6 MR. NUNNARI: No, Your Honor. Thank you.

7 THE COURT: Does either party have any objection
8 to any part of these proceedings not previously made?

9 MS. MULHAUSER: No, Your Honor.

10 MR. NUNNARI: No, Your Honor.

11 THE COURT: Mr. Duran, you may have some grounds
12 to appeal. You've waived your right to appeal. However, I
13 have to notify you that if grounds for appeal appear to
14 exist, discuss that with Mr. Nunnari, and consult with him
15 with regard to what appears to be in your best interest
16 with regard to challenging either your conviction or your
17 sentence. You must do so within 14 days of the date of
18 entry of my judgment which will occur sometime later today
19 or tomorrow. If you fail to do so, you will waive forever
20 whatever right you might otherwise have had to challenge
21 your conviction or your sentence, either by way of direct
22 appeal, habeas corpus or post conviction relief under 28
23 U.S.C. section 2255. You understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: I should indicate to you in terms of,

1 I'm sure Mr. Nunnari will as well, that if you were to
2 undertake an appeal, you would put at risk the government's
3 willingness to abide by the promises it made to you, and I
4 suspect that those promises encouraged you to plead guilty
5 and to -- rather than potentially stand trial and I would
6 assume face a substantially greater sentence, certainly
7 would be no acceptance of responsibility if you were to
8 stand trial. I do have to notify you that if there is some
9 basis for an appeal, talk that over with Mr. Nunnari and go
10 from there.

11 Anything further from the government?

12 MS. MULHAUSER: Nothing further.

13 PROBATION: Your Honor, voluntary surrender.

14 THE COURT: Yes, I mentioned that earlier. You
15 will be notified -- first of all, you've got to keep the
16 pretrial service and probation officer -- office whether in
17 this district or home in Iowa, you must keep them informed
18 of your residence, so the Bureau of Prisons will notify you
19 when and where to report.

20 The same conditions of pretrial release will be
21 maintained. I trust it goes without saying that despite
22 what lies ahead, that very important unpleasant prospect,
23 if you were to fail to appear, you would be caught sooner
24 or later. You'd be prosecuted, receive a five-year term
25 for bond jumping, you understand that? And that will be in

1 addition to the 14 months I've imposed today. Do you
2 understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Anything further from the government?

5 MS. MULHAUSER: Nothing further.

6 THE COURT: Mr. Nunnari?

7 MR. NUNNARI: No, Judge. Thank you.

8 THE COURT: That will conclude this proceeding.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s:/Angela D. Nixon

Angela D. Nixon, RMR, CRR
Date